

**Transforming Regulatory Enforcement: Freeing up Business
Growth
Consultation Response Form**

Instructions for completion		
<p>You can move between questions by pressing the 'Tab'/'Shift-Tab' or 'Page Up' / 'Page Down' keys or by clicking on the grey boxes with a mouse. Please type your replies within the grey boxes or click on the grey boxes labelled 'Please select' to reveal a drop down list to select an answer. Once you have completed the form please return it by email to: treconresponse@bis.gsi.gov.uk</p>		
Please provide information about yourself and your organisation (optional).		
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Responding to this consultation:		
<p>Are you responding as: An individual <input type="checkbox"/> or on behalf of an organisation <input checked="" type="checkbox"/></p> <p>If you are responding on behalf of an organisation did you consult others within your organisation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If you represent a business, what size is it? Please select from list</p> <p>Does your business have sites in more than one local authority area? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>		
Confidentiality:		
<p>Please indicate which option you would prefer:</p> <ul style="list-style-type: none"> • Responses can be published with respondent's details <input checked="" type="checkbox"/> • Responses can be published, but without respondent's details <input type="checkbox"/> • Responses cannot be published <input type="checkbox"/> <p>Unless otherwise indicated responses will be treated confidentially and not be shared with third parties.</p>		

Consultation response – Transforming Regulatory Enforcement: Freeing up Business Growth

Proposed principles of regulatory enforcement

QUESTION 1: Are these the right principles to underpin the frontline delivery of regulation?

Yes No

Please provide details

But see comments below

QUESTION 2: Are there other principles you would like to see included?

Yes No

Please provide details

We are responding to questions on regulatory enforcement from two perspectives – the process of regulation itself, and the effect which regulation of various kinds is likely to have on competition. If regulation aims to deter undesirable behaviour, any such rules should meet the following requirements:

clear rules (bright lines);

consistent enforcement;

decisions which are explained and whose principles can be understood for application to other cases;

and education of practitioners about the necessity of implementation.

Such criteria seem to reflect transparency in the meaning of the document, and to this extent we welcome the emphasis. However regulation and its enforcement can also inhibit competition, in particular if transparency in one aspect enables companies to co-ordinate their policies so that they compete less energetically; or if companies within the market use regulatory burdens to handicap smaller competitors or deter entry. In implementing reforms, the government should be aware of and guard against such dangers

Current experience of regulatory enforcement

QUESTION 3: What aspects of regulatory enforcement are most problematic for you?

Please specify

QUESTION 4: Do you have examples of when you feel you have been treated unreasonably?

Yes No

Please provide details

QUESTION 5: How frequently have these problems occurred?

Please be specific

QUESTION 6: Do you feel there are effective mechanisms in place for you to appeal or complain about the way regulations are enforced?

Yes No

Please provide details

Appeals are a necessary part of any enforcement programme, and valuable in focusing the attention of the 'enforcers'; however any appeals process is expensive for business, both in terms of legal fees and of the time and attention of senior executives. The appeal process needs to be carefully designed so that it does not constitute an undue burden on either regulators or businesses, and is not used strategically by those whose deep pockets can use them to delay and deter enforcement.

QUESTION 7: What aspects of regulatory enforcement work best for you?

Please provide details

QUESTION 8: What are the best examples of when you've been dealt with well?

Please provide details

Reviewing cumulative burdens and the scope to improve front line delivery

QUESTION 9: How would you want to be involved in this sort of sector based review of enforcement and the regulatory landscape?

Please provide details

It is important that someone (not necessarily ourselves) reviews the competition implications of regulatory reform.

QUESTION 10: How can reviews be used to strike a better balance between 'self-managed compliance' and intervention by state regulators?

Please specify

QUESTION 11: What are the key things you would like to see reviews cover?

Please provide details

QUESTION 12: How can such reviews be made effective at delivering improvements in the way that regulation is enforced?

Please be specific where possible

Providing local accountability to challenge delivery on the ground

QUESTION 13: What are the key issues faced by business in the day-to-day experience of locally managed enforcement services?

Please specify

QUESTION 14: What role do you think Local Enterprise Partnerships could play in driving improvements?

Please specify

QUESTION 15: What else could help deliver improvements in locally managed regulatory services?

Please provide details

Earned recognised for effective compliance measures

QUESTION 16: Do you have compliance measures in place that you feel are being over-looked?

Yes No

If so, please provide details

QUESTION 17: How could we ensure that existing compliance measures are given proper consideration?

Please provide details

There is a danger that in giving credit for compliance programmes, the focus moves to the programme rather than the compliance. It is important that businesses do not feel that because they have 'ticked the box' of the letter of compliance training, they need then not be concerned about the spirit of the compliance itself. So compliance training needs to be focused on ensuring that all members of the business have an understanding of the reasons for the regulation and the importance both for the business and wider considerations of compliance. One important aspect would be internal incentives, particularly for relatively new areas of regulation. For example, some businesses appear to regard competition law as an optional and unimportant extra, in some cases awarding bonuses to senior executives who have been found guilty of breaking the law. On the other hand, well motivated and delivered compliance programmes are an important way of informing and motivating employees about important areas of law, particularly where these are new. So the emphasis needs to be on rewarding carefully designed and delivered compliance programmes, and attempting to assess the 'real' reach of these within the organisation and their effect on relevant behaviour at all levels of the business.

Increasing the scope for self-management through co-regulation

QUESTION 18: Are there areas where you think co-regulation could be applied to enable more formal sharing of regulatory responsibility, including delegating functions to business or third party providers?

Yes No

Please provide details

QUESTION 19: What specific functions do you think could be delegated from particular public regulators?

Please provide details

Increasing capability and industry ownership through professional standards

QUESTION 20: Are there existing frameworks of professional standards that you feel could be given greater consideration in managing regulatory compliance?

Yes No

Please provide details

QUESTION 21: Are there areas where you feel new professional standards schemes could be usefully developed?

Yes No

Please provide details

QUESTION 22: What barriers do you think might stop this approach from being used more widely?

Please specify reasons why

Setting clear requirements and supporting compliance through assured guidance

QUESTION 23: Would you welcome assured guidance?

Yes No

Please provide details

QUESTION 24: What would be required to make it work?

Please provide details

QUESTION 25: How best could this be achieved?

Please provide details

Setting clear standards of service for regulators and supporting capability

QUESTION 26: Are there particular areas of skills and expertise that you feel could be helpfully developed for enforcement officers?

Yes No

Please provide details

QUESTION 27: What are your worst experiences of interactions with regulators, and how could these be improved through professional development?

Yes No

Please provide details

QUESTION 28: Have you ever referred to the Regulators' Compliance Code when seeking to address an issue with a regulator?

Yes No

Please provide details

QUESTION 29: Are there ways in which you think the Regulators' Compliance Code could be enhanced to help improve regulatory services?

Yes No

Please provide details

Thank you for completing this questionnaire. Please add any other comments you have in the box below and submit this form via email to:

treconresponse@bis.gsi.gov.uk

As an academic organisation with expertise in economic regulation and competition issues, we have drawn attention to some areas which should be taken into account in regulatory reform. We have responded only to questions which raise such general issues, and not in the capacity of an organisation which might be directly affected by the proposals. We are happy to discuss our comments further.

URN 11/990